

810-6-1-.45 Contractors Furnishing and Erecting Building Materials Under Contract With the United States.

(1) Sections 40-23-4(a)(17) and 40-23-62(2) specifically exempt the United States government from paying sales or use tax on its purchases of tangible personal property. These exemptions, however, do not apply to purchases by a contractor where the contractor has a construction contract with the United States government to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer of all the materials which the contractor purchases and uses in the performance of the construction contract and which become a part of real property. The United States Supreme Court in *State of Alabama v. King & Boozer*, 314 U.S. 1, 62 S.Ct. 43 (1941), and in *Curry v. U.S., et al.*, 314 U.S. 1, 62 S.Ct. 48, held that the Alabama sales and use taxes on building materials used by building contractors for the United States government were due by such contractors even though the costs of such taxes were passed on to the United States government. The court held that these taxes were levied on the contractors and not on the United States. ~~On and after October 1, 2000, however, a contractor's purchases which do not qualify for the exemptions in Sections 40-23-4(a)(17) and 40-23-62(2) may qualify for the new sales and use tax exemption outlined in paragraph (2) below.~~ (Sections 40-23-1(a)(10) and 40-23-60(5))

~~(2) On and after October 1, 2000, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract awarded prior to July 1, 2004, with the United States government is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33)~~

~~(3) On and after July 1, 2004, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract with the United States government is subject to all state, county, and municipal sales and use taxes for any contract awarded, or any portion of a contract which is revised, renegotiated, or otherwise altered, on and after July 1, 2004, to the extent that such revision, renegotiation, or alteration requires the purchase of additional tangible personal property. Items purchased after June 30, 2004, pursuant to a contract awarded prior to July 1, 2004, will continue to be exempt for the remainder of the contract to the extent that any post June 30, 2004, revision or amendment does not require the purchase of additional tangible personal property.~~

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Authority: Sections 40-2A-7(a)(5), 40-23-1(a)(10), 40-23-4(a)(17), 40-23-31, 40-23-60(5), 40-23-62(2), 40-23-83, and 40-9-33, Code of Alabama 1975

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